

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**East Hill Manufacturing Corp.,
Debtor.**

**Chapter 11 Case
#97-11884**

*Appearances: Paul S. Kulig, Esq.
Rutland, VT
Attorney for Bank One*

*Jesse T. Schwidde, Esq.
Glinka & Schwidde
Rutland, VT
Attorney for debtor*

*John Norton-Griffiths
Rutland, VT
Pro se Secured Creditor*

**MEMORANDUM OF DECISION
DENYING *SUA SPONTE* MOTION FOR SANCTIONS UNDER RULE 9011
AGAINST NORTON-GRIFFITHS**

The matter before the Court is the Court's *sua sponte* request for John Norton-Griffiths, *pro se*, to show a basis in law and fact for his second Motion for Sanctions Under Bankruptcy Rule 9011, filed on December 18, 2001 against Paul S. Kulig, Esq., counsel for the creditor, Charter One Bank (hereafter "the Bank"). Mr. Norton-Griffiths requested Bankruptcy Rule 9011 sanctions based upon allegations that Attorney Kulig wrongfully failed to withdraw the Bank's claim against the debtor. Pursuant to the hearing held on January 29, 2002, the opposition submitted by Attorney Kulig, and the record, this Court denied the motion for sanctions both on the merits and because Mr. Norton-Griffiths lacked standing to seek such relief pursuant to the prior decisions of this Court and the U.S. District Court. Concerned that this successive motion for sanctions by Mr. Norton-Griffiths not only lacked legal and factual merit but reflected the potential for an abusive filing in violation of Bankruptcy Rule 9011, this Court advised the movant of its concerns with respect to Rule 9011 and directed Mr. Norton-Griffiths to substantiate the legal and factual underpinnings for his motion. Mr. Norton-Griffiths responded by filing his *Secured Creditor John Norton-Griffiths' Memorandum of Facts and Law Supporting Motion Pursuant to F.R.B.P. 9011* [Dkt. #343-1]. For the reasons set forth on the record at the hearing held on January 29, 2002, this Court's denial of Mr. Norton-Griffiths'

request for Rule 9011 relief stands, and shall not be disturbed based upon anything filed subsequent to that hearing. For the reasons set forth below, the Court finds that Mr. Norton-Griffiths has presented a sufficient legal and factual basis for his most recent motion to avoid imposition of sanctions under Rule 9011 at this time.

DISCUSSION

Bankruptcy Rule 9011 provides in pertinent part:

- (b) **REPRESENTATIONS TO THE COURT.** By presenting to the court ... a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the persons's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, –
 - (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 - (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
 - (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.
- (c) **SANCTIONS.** If, after notice and a reasonable opportunity to respond, a motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subsection (b). It shall be served as provided in Rule 7004.

The Court, on its own authority, directed Mr. Norton-Griffiths to substantiate the basis for his second motion for sanctions so it could determine whether he was, in fact, in violation of the foregoing provision. This Court takes the mandates of Rule 9011 seriously and expect all litigants to conduct themselves in compliance with Rule 9011. This Court also believes special consideration must be given to the obstacles facing parties who choose proceed without benefit of counsel, and recognizes the latitude accorded *pro se* parties pursuing relief in federal courts in this Circuit. See Patrick v. LeFevre, 745 F.2d 153, 160 (2nd Cir.

1984)(Second Circuit has “long evinced a sensitivity toward the plight of the uncounselled [party] attempting to navigate the technically-laden road to the courthouse.”). Thus, in cases such as this the Court must balance the handicap under which a *pro se* party is proceeding against the importance of maintaining the standards set by Rule 9011. Ultimately, the Court will not countenance bad faith or abusive filings designed to harass opposing parties or their counsel, in violation of Rule 9011, by any party, but may allow the *pro se* status of the litigant to be a factor in determining whether the litigant should be given extra time to remedy improper conduct and in determining what sanctions to impose under Rule 9011. The original papers filed in connection with the subject motion failed to set forth any specific legal basis for the relief sought, and appeared to be seeking the same relief that had already been denied by this Court (Littlefield, J.), the U.S. District Court and the U.S. Court of Appeals for the Second Circuit.

Upon a careful review of the response filed by Mr. Norton-Griffiths, it appears that notwithstanding the legal deficiencies in his second motion for sanctions under Rule 9011, it does not appear that the motion was filed with a complete absence of law and fact, or the requisite bad faith, to warrant Rule 9011 sanctions *sua sponte*. While the case law and factual contentions set forth by Mr. Norton-Griffiths do not substantiate relief under Rule 9011 against Attorney Kulig or alter his lack of standing to seek the requested relief, this Court is satisfied that *sua sponte* sanctions against Mr. Norton-Griffiths are not warranted at this time.

Based on the foregoing, the court will not impose sanctions pursuant to Bankruptcy Rule 9011 upon Mr. Norton-Griffiths in connection with this motion.

February 21, 2002
Rutland, Vermont

Colleen A. Brown
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:
East Hill Manufacturing Corp.,
Debtor.

Chapter 11 Case
#97-11884


#350-1

ORDER
DENYING *SUA SPONTE* MOTION FOR SANCTIONS UNDER RULE 9011
AGAINST NORTON-GRIFFITHS

This cause having come before the Court pursuant to this Court's *sua sponte* request for John Norton-Griffiths, *pro se*, to show a basis in law and fact for his second Motion for Sanctions Under Bankruptcy Rule 9011, filed on December 18, 2001 against Paul S. Kulig, Esq., counsel for the creditor, Charter One Bank. Based upon the hearing held on January 29, 2002 and for the reasons set forth in the Memorandum of Decision issued contemporaneously, it is

ORDERED AND ADJUDGED that this Court will not impose sanctions *sua sponte* pursuant to Bankruptcy Rule 9011(c)(1)(B) upon Mr. Norton-Griffiths in connection with his second *Motion by Secured Creditor John Norton-Griffiths Pursuant to F.R.B.P. 9011* filed December 18, 2001.

February 21, 2002
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF VERMONT

In re: EAST HILL MANUFACTURING CORPORATION

Case No. 97-11884
Chapter 11

XX 351-1

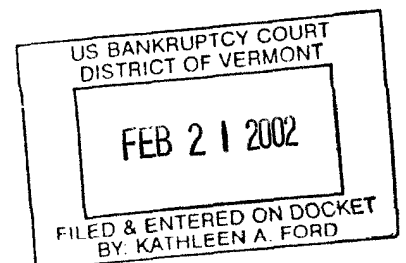
ORDER

The Motion by Secured Creditor John Norton-Griffiths pursuant to F.R.B.P. Rule 9011 and Rule 9024 came on for Hearing before this Court on January 29, 2002, the Honorable Colleen A. Brown, Presiding Judge.

Based upon the Motion and attached supporting documents and the Memorandum of Law in Opposition, the Court makes the following Order:

Pro se creditor John Norton-Griffiths moves this Court for Rule 9011 sanctions against Attorney Paul S. Kulig on the ground that Mr. Kulig refused to withdraw the proof of claim he filed against the debtor, East Hill Manufacturing, Inc., on behalf of his client, Charter One Bank. It appears from the arguments presented that the gravamen of Mr. Norton-Griffiths' argument is that the subject proof of claim is not valid as there is, he claims, no basis for any claim by Charter One against the debtor

This is the second 9011 Motion that Mr. Norton-Griffiths has filed against Mr. Kulig in the last three months relating to this claim by Charter One against the debtor. The prior Motion, brought on different grounds, was denied.



In this Motion, Mr. Norton-Griffiths argues that any claim that Charter One held against the debtor was extinguished by virtue of the sale of Mr. Grossi's real property which was held to satisfy the Judgment Order and Decree of Strict Foreclosure entered by the Rutland Superior Court on August 20, 1999. Mr. Kulig responds that this Court has already considered the issue of the validity of Charter One's claim against the debtor and ruled not only that the claim was valid but also that Mr. Norton-Griffiths lacked standing to raise any objection to the claim. Mr. Norton-Griffiths replied to this that the matter presented is different in that it arises from the events flowing from the August 1999 State Court Order and were, therefore, not addressed in any of the litigation referred to by the Bank.

This Court has considered the arguments of counsel and the papers filed herein and, in particular, has reviewed the prior decisions of this Court, entered by Judge Littlefield, the decisions of the U. S. District Court for the District of Vermont entered by Judge Murtha in December, 2000, and the Decision of the U. S. Circuit Court of Appeals for the 2nd Circuit entered on October 21, 2001, all dealing with the various aspects of the validity of the Charter One claim against the debtor.

Based on those matters, the Court finds that Mr. Norton-Griffiths lacks standing to file this Motion or seek this relief as to the Proof of Claim of Charter One Bank for the reasons articulated in Judge Littlefield's Decisions and the affirmance entered by the District Court and the Circuit Court. Accordingly, this Court holds the relief sought may be and is denied on the basis of lack of standing.

However, even assuming *arguendo* that the movant were found to have standing, the

Court would deny relief sought on two additional grounds; first, the District Court has specifically addressed this issue when it ruled: “ The debtor claims that the Bank’s Superior Court foreclosure action against the Grossis somehow bars the Bank’s Proof of Claim against the debtor. This argument is difficult to understand. The Grossis were additional borrowers on the second line of credit, putting up their house as collateral. Therefore, the Bank was entitled to pursue its remedies against them as well as against the debtor. The extent to which the outstanding indebtedness is satisfied by the foreclosure is a distinct issue from whether and in what amount the Bank has a remaining claim against the debtor.”

This is from the decision entered by the U. S. District Court on December 5, 2000, at page nine.

Clearly, Judge Murtha considered the relationship between payments by the Grossis vis-a-vis the liability of the debtor and unequivocally concluded the two obligations were distinct. Mr. Kulig has provided a detailed computation of the amount due from the debtor and while not making any finding as to the accuracy of his computation, the Court finds that this response clearly and persuasively sets forth the basis for a remaining claim against the debtor. Moreover, the Court holds that the issue of whether there may be liability by the debtor after payment by the Grossis has already been considered and decided in favor of the Bank. It will not be relitigated here.

The second additional ground for today’s ruling is the utter lack of legal basis provided by Mr. Norton-Griffiths in support of 9011 relief. The fact that this issue has been litigated and determined by this Court and affirmed by both the District Court and Court of Appeals calls into

question the very basis of Rule 9011. Mr. Norton-Griffiths repeatedly argued that Vermont law requires the Court to find the Bank to have no claim against the debtor and that there is a presumption of full payment by the Grossis under Vermont law without citing a single case or specific statutory basis for these conclusions. The moving papers refer only to general provisions of Vermont law relating to foreclosure and redemption and do not relate specifically to the precise issue raised in this very serious Motion. Relief under Rule 9011 is a drastic remedy, and the grounds for such relief must be clearly articulated and carefully supported. This has not been done here.

Accordingly, the Motion by Mr. Norton-Griffiths for 9011 sanctions against Mr. Kulig is denied. However, that does not conclude the matter before the Court.

Mr. Kulig has requested that this Court award attorney's fees to reimburse him for the costs of preparing and filing the Memorandum Response to the 9011 Motion and for his time for attending the Hearing.

Based upon that request and this Court's sua sponte authority,

IT IS HEREBY ORDERED that Mr. Norton-Griffiths shall file within twenty (20) days from January 29, 2002, a Memorandum of Law setting forth the legal basis for the relief he seeks herein unless he requests additional time which would be granted. The Court is denying the relief sought, but if Mr. Norton-Griffiths is not able to set forth persuasive evidence that the relief he seeks and the legal arguments he makes are supported by existing case law, as required by Rule 9011, this Court will issue an Order directing Mr. Norton-Griffiths to show cause why this Court should not award attorney's fees to Mr. Kulig for the time he spent in responding to and

defending this Motion as well as costs to the witnesses subpoenaed for a Hearing which appears, at this point, to have been filed and pursued in violation of Rule 9011.

For all of those reasons, the Motion for Sanctions under 9011 is also denied.

Dated this 21st day of February, 2002.

A handwritten signature in cursive script, reading "Colleen A. Brown".

Colleen A. Brown, U. S. Bankruptcy Judge